

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10349 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No.

GUSAI BHIMBHARATHI CHANDRABHARATHI

Versus

COMMISSIONER

Appearance:

MR AVINASH K MANKAD for Petitioner
MR DA BAMBHANIA for Respondent No. 1
MR HS MUNSHAW for Respondent No. 2, 3

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 14/02/97

ORAL JUDGEMENT

Rule. Mr.D.A.Bhambhanian and Mr.H.S.Munsha waives service of the rule for the respondents.

The petitioner is a Multi Purpose Health Worker.
He remained in civil jail for the period on and from 28.3.1985 to 27.5.1985 because he failed to pay dues on account of maintenance to his wife which has nothing to

do with his conduct as Government Servant. However, he was in jail and therefore he could not come on duty and as such an order had to be passed placing him under suspension and same passed on 18.5.1985. After the date of this suspension order dated 18.5.1985 the petitioner was released from Jail on 27.5.1985 but he stood reinstated on 25.11.1986 on the basis of the order dated 14.11.1986. The petitioner's grievance is that he was out of jail on 27.5.1985 and he could very well discharge his duties thereafter, but for the suspension order dated 18.5.1985 which could have been revoked immediately. It was an inaction on the part of the respondents to pass reinstatement order as late as on 14.11.1986 and in pursuance to that he stood reinstate on 25.11.1986. Learned Counsel for the petitioner therefore submits that the petitioner could not be deprived of the salary for the period from 27.5.1985 to 25.11.1986 and as such the respondents have committed serious error of law in passing the order Annexure 'D' so as to deny the salary of this period. By order dated 24.8.1992, Annexure 'D' it has been ordered that period of 28.5.1985 to 11.6.1985 shall be regularised against the earned leave for fifteen days, 12.6.1985 to 14.7.1985, half-pay leave for 33 days and 15.7.1985 to 24.11.1986, leave without pay for a period of 498 days. Thus, certain period has been adjusted against the earned leave and half pay leave and the rest of the period has been regularised as leave without pay. Notice in this case was issued on 19.12.1996 as to why this petition may not be admitted and finally disposed of at admission stage. Affidavit-in-reply has been filed on behalf of respondent No.3 and it has been submitted that the order Annexure 'D' is an order with regard to the regularisation of the suspension period and therefore this Court will not interfere with that order.

I have considered the submissions made on behalf of both the sides. No doubt the order Annexure 'B' dated 24.8.1992 is an order with regard to the period of suspension but it is the common case of the parties that neither any inquiry was pending against the petitioner nor criminal case. The petitioner had to be placed under suspension because while being in jail he could not report on duty. If that was the ground on which the petitioner was placed under suspension, the suspension order should have been revoked immediately when the petitioner came out of the jail on 27.5.1985. Merely because the authorities took long time in passing the order reinstating the petitioner from suspension, the petitioner cannot be deprived from his dues for that period. Supposing the authority would not have passed

the order revoking the suspension for yet another period of one or two years or even more than that, could the petitioner be deprived for the salary for the whole period ? The petitioner's right to receive the salary cannot be made to depend upon the fortituous circumstance and contingent event depending upon the sweet will of the officer who is to deal with the matter. The order reinstating the petitioner could have been passed immediately when he came out of the jail. No justification has been offered or pleaded to show as to why the order reinstating the petitioner from suspension in the facts of this case was passed as late as in November, 1986. Had this very order been passed on 28.5.1985 itself it would have saved the petitioner's as well as respondents from this unwarranted litigation. Thus the period for which the the petitioner has been kept under suspension without justification cannot be sought to be regularised by way of adjusting the period against his earned leave or half-pay leave or leave without pay more particularly when the earned leave is a leave which can be encashed now. Thus, I do not find that the order dated 24.8.1992 is based on any justification and it cannot be said that such an order taking petitioner's earned leave and to treat certain period as half-pay leave and leave without pay could be passed in accordance with law and the relevant rules. The order is violative of the scheme of the rules as well as the petitioner's rights under Article 14 of the Constitution of India to receive fair treatment at the hands of the authorities. The action of the respondents in passing the order dated 24.8.1992 is on the face of it arbitrary to the core and has the effect of denying the pay to the petitioner for this period for no lawful justification whatsoever. Thus, the order dated 24.8.1992 cannot be sustained in the eye of law.

Accordingly, this Special Civil Application is allowed. Impugned order dated 24.8.1992, Annexure 'D' passed by the District Development Officer, Kachchh-Bhuj is hereby quashed and set aside and the respondents are directed to pay to the petitioners the full and due amount of pay and allowances for the period from 27.5.1985 to 25.11.1986 within a period of one month from the date certified copy of this order is served upon the respondents. The petitioner's prayer for allowing him the interest at the rate of 18% p.a. cannot be acceded to in the facts of this case for the simple reason that petitioner himself has been sleeping over his rights for all this periods and has approached this Court only on 18.12.1996. This Special Civil Application therefore partly succeeds as above and the Rule is made absolute in

the terms as aforesaid. No order as to costs.
